IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1324 of 1999
in
SPECIAL CIVIL APPLICATION No 7130 of 1999
with
CIVIL APPLICATION NO.11364 OF 1999
with
CIVIL APPLICATION NO.148 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VINUBHAI RAMJIBHAI MISARIYA

Versus

STATE OF GUJARAT

Appearance:
MR BHUSHAN B OZA for appellants
MR LR PUJARI, ld.AGP for respondents nos.1 and 2
MR CL SONI for respondent no.3

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE N.G.NANDI

Date of decision: 17/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. This Letters Patent Appeal is directed against the order dated 20.9.99 passed by the learned single Judge on the ground that the petition suffers from the vice of misjoinder of parties as independent rights of more than one petitioners have been joined together by giving consolidated facts.

2. The Special Civil Application was filed by 6 petitioners in all claiming that they joined the service of the Company - respondent No.3, namely, Gujarat Communications and Electronics Ltd. during the years 1990 to 1992 and were confirmed after two years during the years 1992 to 1994 respectively.

3. They were working in the Company as Jobbers in the nature of Class IV employees doing all types of work including that of loading and unloading.Their services were also used for the purpose of issuing telephone instruments from the stores and sign store requisition. They claim that in fact they were working as helpers but instead of calling them helpers, they have been called as jobbers. At Gandhinagar instead of helpers the word used is jobbers whereas at Vadodara the same work is performed by those, who are known as helpers. It was also claimed that while the Company - Respondent No.3 is an undertaking of respondent No.1 i.e.State of Gujarat, the entire capital investment is that of the State of Gujarat and the Managing Director and Chairman and other Officers are also appointed by the State of Gujarat. All the petitioners claim that they belong to SC and ST. On account of privitisation of many of the Government Undertakings - respondent No.3 Company was considered for privatisation and the grievance was raised that despite the Government absorbing all other employes of the Company in other Departments under the State of Gujarat, these six petitioners were the only employees who were facing threat of being rendered unemployed. It was also the case of the petitioners that there were about 160 employees at the Gandhinagar Unit of the respondent No.3 - company. On 31.12.98 about 80 employees were absorbed in other Departments as per the request of the respective employees. Thereafter, few others also either sought voluntary retirement or were absorbed by other Departments of the Government and about 50 employees were still working with the respondent No.3 Company. With the Special Civil Application they placed on record a copy of

the order dated 29.12.98 giving a list of about 40 employees who were being absorbed in other Departments but they faced the threat of termination. They have further stated that they joined the service as trainee with the stipend of Rs.500/-P.M. and in the second year, they were given stipend of Rs.650/--, after which they were confirmed as permanent jobbers. The amount received by them was then reduced from Rs.650/-- to Rs.550/-as basic salary and they were orally told by the Management of the respondent No.3 Company that there are difficulties in their absorption because they were being paid lower than the minimum wages paid to the Government employees i.e. Rs.750/-- per month as basic pay. It is the case of the appellant that after 5th Pay Commission recommendations, the basic pay had been revised from Rs.550/-- to Rs.2200/-- and from Rs.750/-to Rs.2550/-and they were the only 6 persons, who could not be absorbed. The prayer was made in the Special Civil Application for their absorption in any of the Department of the State Government at the minimum pay scale prevailing in the government employment.

4. In this Letters Patent Appeal notice was issued on 4.10.99 and the same was made returnable on 25.10.99. Thereafter the matter was made to stand over on several dates. When the matter came up before this court on 13.8.2001 after hearing both the sides, the Letters Patent Appeal was admitted and the service was waived on behalf of respondents Nos.1 to 3 and the main appeal was directed to be listed for final disposal on 16.8.2001.

5. In this Letters Patent Appeal, Civil Application No.11364/99 had been filed for interim relief and in this Civil Application the notice was issued on4.10.99, which was made returnable on 25.10.99 and it was ordered that in the meantime status quo qua the appellants as on that date shall not be disturbed. It appears that during the pendency of this Letters Patent Appeal and the Civil Application No.11364/99, as aforesaid while an ex parte ad interim order as was passed on 4.10.1999 in Civil Application No.11364/99 to maintain status quo as on the date of the order i.e. 4.10.99 was operative, the appellants were transferred on 12.5.2000 to Vadodara requiring them to joint at Vadodara on or before 16.2.2000 and, therefore, they filed another Civil Application No.3824/2000 with the prayer that they should be allowed to continue in service in the same manner as they had been working for the past so many years at Gandhinagar and pending admission hearing and final disposal of the Letters patent Appeal, respondents be directed to provide to them residential quarter at

Vadodara and pay the salary at par with the helpers in the Company. It further appears that the prayer made in para 7(B) was in the nature of an alternative prayer to the prayer made in clause (A) of para 7. This Civil Application came up before learned Vacation Judge. The learned Vacation Judge noticed the contents of the affidavit in reply dated 30.5.2000 filed in Civil Application No.11364/2000 and it was recorded on 31.5.2000 by the learned Vacation Judge in this Civil Application No.3824/2000 that in view of the contents of Para 5 and 6 of the affidavit in reply dt. 30.5.2000 (in Civil Application No.11364/2000) including the averment that at Vadodara Unit there were no quarters either of the Company or of the Government and that applicants will be entitled for HRA like other employees and that in view of the averments made in Para 5 and 6 of the affidavit in reply, as above filed by respondent No.3, this Civil Application No.3824/2000 was permitted to be withdrawn. Thereafter, Civil Application No.11263/2000 was filed by respondent No.3 i.e. Gujarat Communication And Electronics Ltd. for vacating the interim order of status quo as had been granted in Civil Application No.11364/2000 in the Letters patent Appeal. In this Civil Application, respondent No.3 came with the case that the Company was a Government of Gujarat Undertaking, it incurred losses of crores of rupees in last 5 years, many such Government Companies had been making losses and, therefore, Government of Gujarat has decided to disinvest 50% of its stake and had invited 3rd parties as a strategic partner, that as a preparatory measure for disinvestment, the Government offered Voluntary Retirement Scheme (VRS) and Alternative Employment Scheme to the employees of the Company and it was made clear that the employees may opt either of two alternatives. Out of the employes, who had opted for alternative job in the Government Department, most of them were accommodated against the post carrying equivalent or lower pay scales as per availability, but whereas there was no positions available as equivalent to the pay scale of the Class IV employees serving in the company like the present appellants, who are GCEL employees they could not be absorbed in the Government because the pay scale in which they were paid in the Company was still lower than the lowest pay scale available in the Government Department. It was further stated in this Civil Application No.11263/2000 by the Company that there were 2 Units of the Company; one at Gandhinagar and another at Vadodara. Since the Company was incurring heavy losses it decided to close down the Unit at Gandhinagar and to shift few remaining employees to Vadodara. Accordingly the Gandhinagar Unit had been closed and the left out

employees of Gandhinagar Unit were shifted to Vadodara. Now the Government was not going ahead with the disinvestment scheme and it is difficult for the company to continue with the present status, it could not bear further losses at the cost of waste of public money and, therefore, the respondent Company decided to close down and applied for the approval of closure under Sec.25(o)(i) of the Industrial Disputes Act. The present appellants had threatened to initiate contempt proceedings because of the order of status quo as had been passed by this court. The Company had also narrated the details before the Labour Court for closing down,which had been applied and that the order of status quo, as had been passed by this Court, was coming in the way for obtaining the order of approval for closure and, therefore, the order of status quo be vacated and the Company be permitted to proceed with the Application for closure under Sec.25(o)(i) of the Industrial Disputes Act. When this Civil Application came up before the court on 11.12.2000 the Court clarified that it will be open for the Specified Authority under the Industrial Disputes Act, 1947 to go ahead with the proceedings for prior permission of the closure of the Company under SEc.25(o)(i) of the Industrial Disputes Act in accordance with law. The Civil Application was disposed of accordingly with the clarification, as aforesaid, and the Letters Patent Appeal itself was directed to be listed for admission on 20.12.2000.

6. The Company again filed a Civil Application No.148/2001 for vacating the interim relief of status quo granted in Civil Application No.11364/99, this time on the ground that specified authority under SEc.25(o)(i) of the Industrial Disputes Act,1947 had passed an order on 30.12.2000 permitting the Company to close down its Undertaking and while the closure proceedings were going on, scheme of voluntary retirement had been floated and in fact, 709 out of 729 employes had accepted voluntary retirement scheme and only few employes were left out and because of the order os status quo passed by this court, 6 appellants working as jobbers are required to be continued, though most of the employees had already accepted the voluntary retirement scheme and, therefore, in the interest of justice, the order of status quo be vacated. On 13.2.2001 the court passed the following order:-

"At the request made on behalf of learned AGP time is granted to explore the possibility of accommodating the respondents Nos.1 to 6 in the Government service on some suitable post may be

not in the same sale of pay in which the respondents Nos.1 to 6 drawing their salaries in the Company Put up on 28.2.2001".

Thereafter, on 28.2.2001 in Civil Application No.11364/99 the order to the following effect was passed by the court:-

"There is an application being C.A.No.148/2001, filed on behalf of Gujarat Communication and Electronics Ltd., in C.A.No.11364/99, in which notice is already issued. Let copy of C.A.No.148/2001 be also supplied to the Govt. Learned counsel appearing for the employees submits that the employees are wiling to be absorbed on any post with or without pay scale, meaning thereby they want their services to be protected. Let the Govt. consider the proposal and come up with a scheme.Ad interim relief to continue. Put up on 21.3.2001." Again Civil Application No.148/2001 came up before the court on 2.7.2001 and the following order was recorded:-

"Mr.C.L.Soni for the applicant. Mr.B.B.Oza for respondent No.1,2 to 6 and 8. Mr. L.R.Pujari, AGP for respondent No.7. Learned Asst.Govt. Pleader has pointed out that the original petitioners are to be absorbed only against equated or equivalent post but the lowest pay scale of the Class - IV is also higher than the existing pay scale of the petitioners in the Company. The learned A.G.P. is directed to come with the relevant record, pay scales and the concerned officer who is dealing with the question of absorption of these employees alongwith the relevant scheme. S.O. to 13th July, 2001."

Again in Civil Application No.148/2001 when the matter came up before the court, after noticing the case of the parties, the suggestion was made by the Court to consider the case of the appellants for absorption. Paras 4 and 5 of this order dated 20.7.2001 are reproduced as under:-

"4. In the facts and circumstances of the case, having heard the learned counsel of both the sides a suggestion is made to the Ld.AGP to place it for consideration of the concerned authorities in the Government to consider the case of absorption of these six respondents at

the stage where they are drawing the pay in the closed Company and by giving protection of their existing pay in the closed Company whether these respondents can be fixed at any stage in between Rs.2550-3200 and on appropriate terms and conditions which may be agreeable to both the sides. Such absorption on the agreed terms and conditions shall be, of course, subject to the consent of these six employees and they will be bound by such conditions.

5. Mr. Pujari, Ld.AGP wants time to place this suggestion for consideration of concerned authorities. Put up on 6.8.2001."

Thereafter when the main Appeal came up for admission on 13.8.2001, the Appeal was admitted and whereas the service had been waived by the respondents, the same was directed to be listed for final disposal on 16.8.2001 and Civil Application No.148/2001 was also directed to be listed on the same date i.e. 16.8.2001. On 16.8.2001 an affidavit in reply was file don behalf of respondent No.2 i.e. Industries and Mines Department of the Government of Gujarat and this reply was taken on record and arguments were heard and the matter was posted for dictation of order for today i.e. on 17.8.2001.

We find that the grievance which was sought to be voiced by the six appellants, i.e. original petitioners was a common grievance based on identical facts and the rejection of the Special Civil Application was neither necessary nor warranted on the ground of misjoinder as has been done by the learned Single Judge.

So far as the merits of the case are concerned, only resistance shown against their absorption is that the existing pay scale of the appellants in the Company was Rs.2200-3090 and first three appellants were drawing at Rs.2500/- p.m. each and for rest of the three were drawing at Rs.2450/- p.m. after earned increments whereas the lowest pay scale under the Govt. was Rs.2550/- to Rs.3200/- p.m. and therefore, they could not be absorbed. In such cases when there is disparity in the lowest pay scales of a Govt. undertaking and the lowest pay scales in the Govt. and the Govt. undertaking is closed and employees of such undertaking are required to be absorbed and they are ready to work at a pay lower than the lowest pay scale as has been clearly given out before us on their behalf, we fail to understand how their absorption can be sought to be avoided by the Govt. The appellants do not claim the pay

scale of Rs.2550-3200, and ready to work in the pay scale of Rs.2200-3090 at the existing stage. We find that plea taken by the State against their absorption is hypertechnical and rather unreasonable, irrational, arbitrary and devoid of prudence. In case these appellants are ready and willing to work in their existing pay scale which is lower than the lowest in the Govt. it is not going to entail any extra financial burden on the State and therefore it will be rather unjust to render these appellants to be jobless when they have worked for 7 to 10 years in the Govt. undertaking by now.

The net result is that this Letters Patent Appeal is allowed. The impugned order dt.20.9.99 passed by the learned Single Judge is hereby set aside. The respondents are directed to pass appropriate orders with regard to these 6 appellants for their absorption in the pay scale of Rs.2200-3090 p.m. with protection of the existing pay without any claim for pay scale under Govt. The Special Civil Application stands allowed accordingly.

Since the main Letters patent Appeal itself has been decided, no further orders are required to be passed in the pending Civil Application No.11364/99 filed by the respondents and the Civil Application No.148/2001 filed by the Gujarat Communication and Electronics Ltd. and both these Civil Applications are disposed of accordingly.

(M.R.Calla,J)

(N.G.Nandi,J)